

LEONARD
STREET
AND
DEINARD

150 SOUTH FIFTH STREET SUITE 2300
MINNEAPOLIS, MINNESOTA 55402
612-335-1500 MAIN
612-335-1657 FAX

W. KARL HANSEN
612-335-7088 DIRECT
KARL.HANSEN@LEONARD.COM

August 31, 2011

230904

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

FEE RECEIVED

SEP 03 2011

**SURFACE
TRANSPORTATION BOARD**

SEP 2 2011

Re: Finance Docket No. 35549
Canadian Pacific Railway Company - Trackage Rights Exemption –
Consolidated Rail Corporation

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of Canadian Pacific Railway Company's Verified Notice of Exemption, dated August 31, 2011. A check in the amount of \$1,200, representing the appropriate fee for this filing, is enclosed. Compact disks containing the Notice are also enclosed.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy of this letter and returning it in the enclosed postage prepaid envelope.

Please contact me if you have any questions. Thank you for your assistance on this matter.

Very truly yours,

LEONARD, STREET AND DEINARD

W. Karl Hansen

W. KARL HANSEN

SEP 03 2011

R. F. H. H.

FILED

SEP 03 2011

**SURFACE
TRANSPORTATION BOARD**

8096734v1

LAW OFFICES IN MINNEAPOLIS • MANKATO • ST. CLOUD • WASHINGTON, D.C.

A Professional Association
WWW.LEONARD.COM

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35549

CANADIAN PACIFIC RAILWAY COMPANY
— TRACKAGE RIGHTS EXEMPTION —
CONSOLIDATED RAIL CORPORATION

VERIFIED NOTICE OF EXEMPTION

SEP 2 2011

230905/

SEP 1 2011

SEP 1 2011

FEE RECEIVED

SEP 01 2011

**SURFACE
TRANSPORTATION BOARD**

W. Karl Hansen
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Tel: (612) 335-7088

FILED

SEP 01 2011

**SURFACE
TRANSPORTATION BOARD**

ATTORNEYS FOR
CANADIAN PACIFIC RAILWAY COMPANY

Date: August 31, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35549

CANADIAN PACIFIC RAILWAY COMPANY
— TRACKAGE RIGHTS EXEMPTION —
CONSOLIDATED RAIL CORPORATION

VERIFIED NOTICE OF EXEMPTION

Canadian Pacific Railway Company dba Canadian Pacific ("CP") files this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) for overhead trackage rights over Consolidated Rail Corporation's ("CRC") Foreman Wye connection with Norfolk Southern Railway Company's ("NS") Detroit District Subdivision at or near NS Milepost 5.2± and its connection with CSX Transportation, Inc.'s ("CSXT") Detroit Subdivision at or near CSXT Milepost CII 5.0± in the vicinity of Fort Street, a total distance of approximately 1,980 feet in Wayne County, MI (the "Line"). The parties will enter into a written agreement, which is not sought in a responsive application in a rail consolidation proceeding.

To improve operational efficiency, CP wishes to move in its own trains the Port of Vancouver intermodal freight (the "POV Freight") currently handled by CSXT under a switching support agreement from NS's Oakwood Yard to CP's Intermodal Facility at Oak Yard in Detroit, Michigan. In order to handle the POV Freight from Oakwood Yard to the Intermodal Facility, CP needs to acquire trackage rights over the Line to connect

with its trackage rights over CSXT's Detroit Subdivision between Milepost CH 5.0± and Milepost CH 13.5±, at Oak Yard.¹

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), CP submits the following information.

Section 1180.6(a)(1)(i) Summary of the Proposed Transaction

CP proposes to acquire limited overhead trackage rights over CRC's Foreman Wye between NS Milepost 5.2± and CSXT Milepost CH 5.0±, a total distance of approximately 1,980 feet in Wayne County, MI (the "Line"). Applicant Canadian Pacific Railway Company's business address is Gulf Canada Square, Suite 500, 401 – 9th Avenue SW, Calgary, Alberta, T2P 4Z4, Canada; telephone number (403) 319-7000. Questions regarding this transaction can be addressed to the counsel identified on the cover page of the notice.

Section 1180.6(a)(1)(ii) Consummation Date

The transaction will be consummated on or immediately after the effective date of this Notice of Exemption.

Section 1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of the transaction is to allow for a more efficient routing of CP's trains into the Intermodal Facility. CP will handle its POV Freight between Oakwood Yard and the Intermodal Facility in its own trains over the trackage rights on the Line and CSXT will be relieved of its obligations under a switching support agreement.

¹ In a related concurrent filing, STB Finance Docket No. 35548, CP seeks authority to acquire trackage rights over approximately 2.5 miles of CSXT's Detroit Subdivision between Milepost CH 5.0± and Milepost CH 7.5±. CP previously acquired trackage rights over CSXT's Detroit Subdivision between Milepost CH 7.5± and Milepost CH 13.5± in *Canadian Pacific Railway Company - Trackage Rights Exemption - CSX Transportation, Inc.*, STB Finance Docket No. 34033, STB served May 31, 2001.

Section 1180.6(a)(5) States in which property of the Applicant is situated.

CP's wholly owned U.S. subsidiaries, Soo Line Railroad Company, Delaware & Hudson Railway, Inc., and Dakota, Minnesota & Eastern Railroad Corporation operate or own properties in Illinois, Iowa, Missouri, Kansas, Nebraska, Wisconsin, Minnesota, North Dakota, South Dakota, Indiana, Michigan, Ohio (property ownership only), Kentucky, Montana, Wyoming, New York, Pennsylvania and New Jersey (trackage rights only).

Section 1180.6(a)(6) Map

A map is provided as Exhibit 1.

Section 1180.6(a)(7)(ii) Agreement

A draft trackage rights agreement, entitled Supplemental Agreement, is attached as Exhibit 2. The Supplemental Agreement incorporates by reference the terms of a June 29, 2001 trackage rights agreement between the parties, a copy of the public version of which is included in Exhibit 2.²

Section 1180.4(g)(1)(i) Labor Protection

Although CP does not anticipate that any employees will be adversely affected by this transaction, it recognizes that employees adversely affected by the trackage rights component of this transaction are entitled to protection under the conditions imposed in *Norfolk and W. Ry. Co. -- Trackage Rights – Burlington N., Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. -- Lease and Operate – Cal. W. R.R.*, 360 I.C.C. 653 (1980).

Section 1180.4(g)(2)(i) Caption Summary

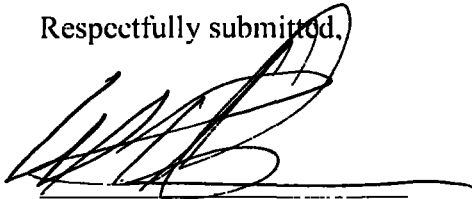
A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

² The Board authorized these trackage rights in *Canadian Pacific Railway Company - Trackage Rights Exemption – Consolidated Rail Corporation*. STB Finance Docket No. 34032. STB served June 6, 2001.

Section 1180.4(g)(3) Environmental and Historical Documentation

Environmental and historical documentation are not required for this transaction. As provided in 49 C.F.R. § 1105.6(c)(4) and 49 C.F.R. § 1105.8(b)(3), trackage rights do not require preparation of environmental and historical reports and documentation.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'W. Karl Hansen', written over a horizontal line.

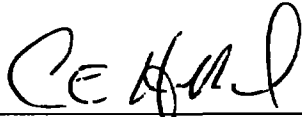
W. Karl Hansen
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Tel: (612) 335-7088
Attorneys for Canadian Pacific Railway Company

VERIFICATION

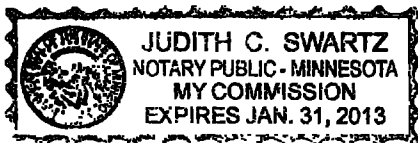
STATE OF MINNESOTA

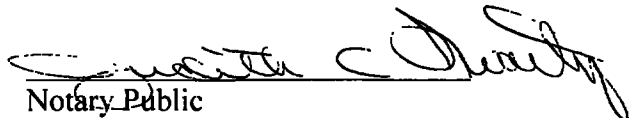
COUNTY OF HENNEPIN

C. E. Hubbard, being duly sworn, deposes and says that he has read the foregoing Notice of Exemption and that the contents thereof are true and correct to the best of his knowledge and belief.


C. E. Hubbard

Subscribed and sworn to before me this 25 day of August, 2011.




Notary Public

My Commission expires:

EXHIBIT 1

Map

[illegible]

EXHIBIT 2

Trackage Rights Agreement

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, entered into as of this _____ of _____ 2011, by and between **CONSOLIDATED RAIL CORPORATION** (hereinafter referred to as "**CRC**") and **CANADIAN PACIFIC RAILWAY COMPANY**, a corporation continued under the Canadian Business Corporation Act, d/b/a Canadian Pacific (hereinafter referred to as "**CP**");

WITNESSETH:

WHEREAS, CRC and CP are parties to a trackage rights agreement dated June 29, 2001 (the "Master Trackage Rights Agreement") that granted CP rights over CRC's Michigan Line between the CRC/Detroit River Tunnel Partnership property line at the west portal of the Detroit River Tunnel, Milepost 2.02±, and the new connection in the vicinity of Miller Road, Milepost 5.50±, all within the City of Detroit, Michigan; and

WHEREAS, CRC owns and operates a segment referred to as the Foreman Wye in Detroit, Michigan that connects to CSX Transportation, Inc.'s ("CSXT") Detroit Subdivision at or near Fort Street on one end and to the Norfolk Southern Railway Company's ("NS") Detroit District Subdivision at or near Rouge River Bridge on the other end; and

WHEREAS, CP leases land, track, and office space owned by CSXT for use as a CP intermodal facility (the "Intermodal Facility") at Oak Yard, Detroit, MI; and

WHEREAS, CP has requested that CRC grant CP trackage rights over the Foreman Wye to allow CP to handle Port of Vancouver intermodal freight in the account of Hapag-Lloyd AG (the "POV IIL Freight") from NS's Oakwood Yard to CSXT's Detroit Subdivision at or near Fort Street; and

WHEREAS, CRC is agreeable to granting such rights under the terms and conditions contained within this Supplemental Agreement and, as applicable, the Master Trackage Rights Agreement; and

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, CRC hereby grants to CP the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of CRC's trackage shown on the plan attached hereto, made part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

The Foreman Wye from a connection with NS at NS Milepost 5.0+ to a connection with CSXT's Detroit Subdivision at or near CSXT Milepost CH 5.0± in the vicinity of Fort Street, a total distance of 1,980 feet.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- (a) CP's use of the Subject Trackage shall be in common with CRC and any other user of the Subject Trackage, and CRC's right to use the Subject Trackage shall not be diminished by this Supplemental Agreement. CRC shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- (b) CRC (or CSXT or NS as may be defined in the Detroit Shared Assets Operating Agreement) shall have exclusive control of the management and operation of the Subject Trackage.

ARTICLE 3. RESTRICTION ON USE

- (a) The Trackage Rights herein granted are non-exclusive limited overhead rights, and are granted for the sole purpose of CP using same for handling trains containing POV IIL Freight to CP's Intermodal Facility.
- (b) CP's trains must contain POV IIL Freight for set-off at the Intermodal Facility and may contain other overhead traffic. CP shall not have the right to set-off traffic other than POV IIL Freight at the Intermodal Facility.
- (c) CP shall not perform any local freight service whatsoever at any point located on the Subject Trackage.
- (d) The total number of CP trains operating on the Subject Trackage shall be limited to one (1) train per day and only operating in the eastbound direction, from NS Milepost 5.2+ to CSXT Milepost CH 5.0±.

ARTICLE 4. COMPENSATION

- (a) For compensation purposes the Parties agree the mileage factor for movements over the Subject Trackage will be one (1) mile.
- (b) The factor to be used in calculating payments to be made by CP for the Trackage Rights covered by this Agreement shall be the current rate in the Master Trackage Rights Agreement multiplied by the mileage in Article 4(a) per car moved over the Subject Trackage or any portion thereof (hereinafter referred to as the "Current Supplemental Charge"), with the mechanics of such compensation being performed in accordance with the provisions of the Master Trackage Rights Agreement.
- (c) CP shall continue to compensate CRC in accordance with the Master Trackage Rights Agreement in addition to the compensation arising from CP's exercise of the rights granted in this Supplemental Agreement.

ARTICLE 5. REGULATORY APPROVAL

- (a) Should this Supplemental Agreement require the prior authorization of the Surface Transportation Board ("STB"), CP at its own cost and expense will initiate and thereafter diligently pursue an appropriate application, petition, or notice to secure such authorization.
- (b) Should the STB at any time during the term of this Supplemental Agreement impose any labor protective conditions upon the arrangement, CP, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 6. TERM

This Supplemental Agreement shall be effective the day and year first above written or, in the event STB authorization is required, on the effective date such authorization is secured, and shall terminate the earlier of October 31, 2012, unless extended by the parties' mutual written agreement, or the date of expiration of the Master Trackage Rights Agreement. CP understands and agrees that the rights granted in this Supplemental Agreement expire as of the expiration date set forth above (unless extended) or any date of termination. When this Supplement terminates, CP agrees to support any filing made by CRC at the STB to terminate the trackage rights granted in this Supplement.

ARTICLE 7. MISCELLANEOUS PROVISIONS

Unless specifically modified by this Supplemental Agreement, all terms and conditions of the Master Trackage Rights Agreement shall remain in force and effect and shall apply to the Trackage Rights granted by this Supplemental Agreement.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

CONSOLIDATED RAIL CORPORATION

By: _____

Name: _____

Its: _____

Date: _____

WITNESS

CANADIAN PACIFIC RAILWAY COMPANY

By: _____

Name: _____

Its: _____

Date: _____

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this _____ day of _____ 2001, by and between:

CONSOLIDATED RAIL CORPORATION
a wholly owned subsidiary of Conrail, Inc.,
(Hereinafter referred to as "CRC") and

CANADIAN PACIFIC RAILWAY COMPANY
(Hereinafter referred to as "CPR")

WITNESSETH:

WHEREAS, CRC owns and operates a line of railroad known as the Michigan Line in Detroit, Michigan; and

WHEREAS, CSX Transportation, Inc. (hereinafter referred to as "CSXT") and Norfolk Southern Railway Company (hereinafter referred to as "NSR") have the right to operate over the aforementioned CRC trackage in common with CRC under the terms of a separate Detroit Shared Assets Operating Agreement; and

WHEREAS, CSXT plans to construct (or arrange to have constructed) and utilize a new connection between CRC's Michigan Line at Milepost 5.50+/- and CSXT's line of railroad known as the Detroit Subdivision, Milepost CH-7.5+/-; in the vicinity of Michigan Avenue at Detroit and

WHEREAS, CPR would like to utilize this new connection as part of a through route for its road trains to/from CSXT; and

WHEREAS, CPR has requested trackage rights over CRC's Michigan Line between the CRC/ Detroit River Tunnel Partnership property line at the west portal of the Detroit River Tunnel at Milepost 2.02 and the CRC/CSXT property line at the new connection between CRC's Michigan Line and CSXT's Detroit Subdivision at Milepost 5.50+/- of CRC's Michigan Line; and

WHEREAS, CRC is agreeable to granting such rights to CPR under the following terms and conditions;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, CRC hereby grants to CPR the right to operate its trains, locomotives, cars and equipment with its own crews and/or those of CSXT (hereinafter referred to as the "Trackage Rights") over the following segments of CRC's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage"):

CRC's Michigan Line between the CRC/Detroit River Tunnel Partnership property line at the west portal of the Detroit River Tunnel, Milepost 2.02, and the new connection in the vicinity of Miller Road, Milepost 5.50 +/-, all within the City of Detroit, Michigan, a total distance of approximately 3.48 miles.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- (a) CPR's use of the Subject Trackage shall be in common with CRC and any other user of the Subject Trackage, and CRC's right to use the Subject Trackage shall not be diminished by this Agreement. CRC shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- (b) Except as may otherwise be provided by this Agreement, CPR shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of CRC, preclude the emergency use by CPR of such auxiliary tracks as may be designated by CRC for such purposes.
- (c) CRC shall have exclusive control of the management and operation of the Subject Trackage. CPR shall not have any claim against CRC for liability account of loss or damage of any kind in the event the use of the Subject Trackage by CPR is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTION ON USE

The Trackage Rights herein granted are granted for the sole purpose of CPR using same for bridge traffic only between the limits of Subject Trackage and CPR shall not perform any local freight service whatsoever at any point located on Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over the Subject Trackage, CPR's locomotives and crews will be equipped to communicate with CRC on radio frequencies normally used by CRC in directing train movements on the Subject Trackage.

- (b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of CRC's representative or his designee.
- (c) Before CPR enters upon the Subject Trackage with its trains, CPR must verify that CPR has the ability to make a complete and continuous movement over the Subject Trackage onto CSXT or CPR's own line of railroad. Further, CPR shall not use, nor shall it permit the use, of the Subject Trackage for any U. S. or Canadian Customs related work. All such Customs related activity shall not occur on the Subject Trackage.
- (d) For purposes of this Agreement, CSXT crews and locomotives shall be considered as CPR crews and locomotives.
- (e) CSXT is not considered a party to this Agreement.

ARTICLE 5. COMPENSATION

- (a) The factor to be used in calculating payments to be made by CPR for the 3.48 mile Trackage Rights distance covered by this Agreement shall be U. S. Currency _____ (hereinafter referred to as the "Current Charge").
- (b) CPR will pay CRC a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 6 by (ii) the number of cars (loaded and empty), locomotive and caboose units moved by CPR with its own and/or CSXT's crews and power over the Subject Trackage by (iii) the miles of Subject Trackage used. Each locomotive unit and caboose, for the purpose of this Agreement shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Numbers).
- (c) CRC shall on or about the tenth day of each month render billing to CPR for CPR's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.

ARTICLE 6. REVISION OF CURRENT CHARGE

- (a) The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- (b) The Current Charge shall be revised upward or downward each year, beginning with the

bill rendered for the month of July 2001 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2000 Index for the first annual adjustment) as related to the index for the previous calendar year (1999 Index for the first annual adjustment) and applying that percent to the Current Charge.

- (c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 1999; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2000; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) (D \times C) + C = \text{revised Current Charge, effective July 1 of the year being revised.}$$

- (d) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.

ARTICLE 7. PAYMENT OF BILLS

- (a) All payments called for under this Agreement shall be made by CPR within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- (b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CRC at the time any work is performed by CRC for CPR.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

- (a) CRC shall arrange to maintain, repair and renew the Subject Trackage. CRC shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CRC does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. CRC shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, CPR shall not by reason of failure or neglect on the part of CRC to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CRC or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by CPR resulting from any such failure or neglect.
- (b) CRC shall perform, at the expense of CPR, such additional maintenance as CPR may reasonably require or request.

ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- (b) Any additional connections to the Subject Trackage which may be required will be subject to CRC's approval (including design) and shall be constructed, maintained, repaired and renewed as determined by CRC.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (a) CRC, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- (b) If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate CPR's operations beyond that required by CRC to accommodate its operations, CRC shall construct the additional or altered facilities and CPR shall pay to CRC the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 11. MANAGEMENT AND OPERATIONS

- (a) CPR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. CPR shall indemnify, protect, defend, and save harmless CRC and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CRC or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of CPR to comply with its obligations in this regard.
- (b) CPR in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CRC, and the movement of CPR's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CRC. CPR's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CRC's operating rules and regulations without the prior consent of CRC.
- (c) CPR shall make such arrangements with CRC as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and CPR shall pay to CRC, upon receipt of bills therefor, any cost incurred by CRC in connection with the qualification of such employees of CPR, as well as the cost of pilots furnished by CRC, until such time as such employees are deemed by the appropriate examining officer of CRC to be properly qualified for operation as herein contemplated.
- (d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by CPR's employees while on CRC's trackage, CPR shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by CPR, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to CPR's employee or employees required to attend such hearings. CRC will promptly provide CPR with copies of all information, reports, etc. resulting from a CRC investigation involving CPR trains/employees, but only as to CPR trains and it's employees.

- (e) CRC shall have the right to exclude from its trackage any employee of CPR determined by above, to be in violation of CRC's rules, regulations, orders, practices, or instructions issued by CRC's Timetable or otherwise. CPR shall release, indemnify, defend, and save harmless CRC and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (f) The trains, locomotives, cars and equipment of CPR, CRC, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient manner of movement of all traffic.
- (g) In the event that a train of CPR shall be forced to stop on the Subject Trackage, and such stoppage is due to insufficient hours of service remaining among CPR's and/or CSXT crew, or due to mechanical failure of CPR's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of CPR fails to maintain the speed required by CRC on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of CPR's trains on the Subject Trackage, CRC shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew CPR's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and CPR shall reimburse CRC for the cost of rendering any such assistance.
- (h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by CRC, and CPR shall reimburse CRC for the cost thereof.
- (i) In the event CRC and CPR agree that CRC should retain employees or provide additional employees for the sole benefit of CPR, the parties hereto shall enter into a separate agreement under which CPR shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CRC and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 12. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in CPR's trains on the Subject Trackage shall be assumed by CPR and reported and paid by it directly to the owner of such cars.

ARTICLE 13. CLEARING OF WRECKS

Whenever CPR's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CRC shall perform or provide such service, including the repair and

restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by CPR at the time of such wreck, shall be promptly delivered to it.

ARTICLE 14. LIABILITY

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss occurs on the Subject Trackage involving the trains and locomotives of only one of the parties hereto, then that one party is solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss occurs on the Subject Trackage involving the trains and locomotives of both CRC and CPR, then (i) each party is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss, unless the Loss was caused solely by one party. In that event, the party causing the loss is solely responsible.
- (c) For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.

- (e) In every case of death or injury suffered by an employee of either party hereto, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and any of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.
- (f) For purposes of determining liability, pilots furnished by CRC to CPR pursuant to this Agreement shall be considered as the employees of CPR while such pilots are on duty as pilots.
- (g) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 (b), all work performed by CRC shall be deemed performed for the sole benefit of CPR and, CPR shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of CRC. CPR shall protect, indemnify, and save harmless CRC and its respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which CPR is responsible.
- (h) If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (i) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.

ARTICLE 15. CLAIMS

- (a) Except as provided in Subarticle (b) below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- (b) Each party will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.

- (c) In the event a claim or suit is asserted against any party to this Agreement which is another party's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- (d) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such the employing party.
- (e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).
- (f) Except as otherwise provided in Article 17(b) hereof, each party agrees to indemnify and hold harmless the other party and its respective parent corporations, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees. Further, except as otherwise provided in Article 17(b) hereof, it is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- (g) It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

ARTICLE 16. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of CPR to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CRC, CRC shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by CRC of any prior breach thereof, to terminate the Trackage Rights and CPR's use of the Subject Trackage. The exercise of such right by CRC shall not impair its rights under this Agreement or any cause or causes of action it may have against CPR for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

- (a) Should this Agreement require the prior approval of the Surface Transportation Board (STB), CPR at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. CRC will assist and support efforts of CPR to secure any necessary STB approval of this Agreement.
- (b) Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement, CPR, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 18. ABANDONMENT OF SUBJECT TRACKAGE

- (a) Notwithstanding the provisions of Article 19 of this Agreement, CRC shall have the right, subject to securing any necessary regulatory approval or exemption, to abandon the Subject Trackage or any portion thereof and CPR shall not protest or seek to delay such abandonment. Before filing an application for regulatory approval of such abandonment or request for exemption, CRC shall give CPR ninety (90) days' advance notice in writing of its intention to do so in order that CPR may determine whether it desires to purchase the Subject Trackage (or a portion thereof) or to discontinue its use thereof.
- (b) If CPR desires to purchase the Subject Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and CRC receives more than one such offer, CRC will exercise its statutory right to negotiate with CPR rather than with the other offerer(s). Thereafter, the rights and obligations of the parties in respect to CPR's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.
- (c) In any one of the circumstances listed below CPR shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:
 - (i) CPR notifies CRC that it does not desire to purchase or
 - (ii) CPR fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
 - (iii) CPR, having made an offer of financial assistance to purchase the Subject Trackage, but being unable to reach agreement with CRC as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
 - (iv) CPR, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial

assistance, or

- (v) CPR, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In any such event, CPR shall promptly file an application or request for exemption with the proper regulatory authority seeking approval of the discontinuance of its operations over Subject Trackage. If CPR does not promptly file an application or request for exemption with the proper regulatory authority seeking approval of the discontinuance of CPR's operations over the Subject Trackage, CRC shall be deemed to have been given CPR's power of attorney to take such action on CPR's behalf.

- (d) In the event any application or request for exemption filed by CRC is granted but an application or request for exemption filed by or on behalf of CPR under sub-article (c) above is denied or postponed by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to (i) effect promptly a sale of the Subject Trackage to CPR (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904, or (ii) relieve, protect and hold harmless CRC from any financial costs, including lost opportunity costs, necessary to accommodate CPR's operations.
- (e) In the event CRC abandons or is permitted to abandon any portion (or all) of the Subject Trackage under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that CPR either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- (f) In the event CRC's application for authority to abandon or request for exemption is denied, CRC will withdraw any application it has filed on behalf of CPR under sub-article (c) above.
- (g) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 18 result in an obligation imposed by a competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 19. TERM

- (a) This Agreement shall be effective the day and year first above written or, in the event

Surface Transportation Board (STB) approval is required, on the effective date such approval is secured, and shall remain in full force and effect concurrently with CRC's Detroit Shared Assets Operating Agreement governing operations over the Subject Trackage that is limited to 25 years from June 1, 1999, the date CRC assumed operating control of the Subject Trackage.

- (b) CPR shall have the right to terminate this Agreement upon six (6) months written notice to CRC.
- (c) Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

ARTICLE 20. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 21. SUCCESSORS AND ASSIGNS

- (a) This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Except as provided in sub-article (c) below, CPR shall not transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other parties to this Agreement. Such consent shall not be unreasonably withheld.
- (b) In the event of an assignment, sale or other disposition of all or any portion of the Subject Trackage, CRC shall assign its interest in this Agreement to the assignee, purchaser or other transferee of the Subject Trackage provided that the proposed successor/assignee will be bound by this agreement and will fulfill all the obligations as CRC herein.
- (c) Subsequent to the commencement date of this Agreement CPR may assign all its rights and obligations under this agreement to a wholly-owned subsidiary or to a successor in the event of a merger, consolidation or sale of all or of substantially all its assets provided that the proposed successor/assignee will be bound by this agreement and will fulfill all the obligations of CPR herein.

ARTICLE 22. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to CRC: Manager-Joint Facility Contracts
 Consolidated Rail Corporation
 2001 Market Street – C-16A
 P. O. Box 41416
 Philadelphia, PA 19101-1416

If to CPR: General Manager – Interline Management
 Canadian Pacific Railway
 410 9th Avenue SW
 Gulf Canada Square
 Calgary ALBERTA
 Canada
 T2P 4Z4

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

ARTICLE 23. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- (b) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- (d) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- (e) All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- (f) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or

equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of another party to this Agreement, such locomotives, cars and equipment shall be considered those of that other party under this Agreement.

- (g) This Agreement is the result of mutual negotiations of the parties hereto, none of whom shall be considered the drafter for purposes of contract construction.
- (h) None of the parties hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other parties, except as otherwise required by law, regulation or ruling.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

CONSOLIDATED RAIL CORPORATION

By _____
Title

WITNESS

CANADIAN PACIFIC RAILWAY COMPANY

By _____
Title

EXHIBIT 3
Caption Summary

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION
FINANCE DOCKET NO. 35549

CANADIAN PACIFIC RAILWAY COMPANY
— TRACKAGE RIGHTS EXEMPTION —
CONSOLIDATED RAIL CORPORATION

Consolidated Railroad Corporation ("CRC") will agree to grant overhead trackage rights to Canadian Pacific Railway Company dba Canadian Pacific ("CP") over CRC's Foreman Wye between the connection with Norfolk Southern Railway Company's ("NS") Detroit District Subdivision at or near NS Milepost 5.2± and a connection with CSX Transportation, Inc.'s ("CSXT") Detroit Subdivision at or near CSXT Milepost CH 5.0±, a total distance of approximately 1.980 feet in Wayne County, MI. The purpose of the transaction is to provide a more efficient routing for CP's trains into the Intermodal Facility at Oak Yard in Detroit, Michigan. This transaction will be consummated on or immediately after the effective date of this Notice of Exemption.

This Notice is filed under § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

Rachel D. Campbell, Director
Office of Proceedings